



FCC Path License Check List

Application for Special Temporary Authority

Transmitter Street Address: _____

Receiving Location: _____

FCC Call Sign: _____

1. Date Path acquisition request received by Officer: _____
2. From whom Path acquisition request was received: _____
3. Date Path acquisition request approved and sent to chief engineer: _____
4. Date chief engineer completed Liberty engineer evaluation report: _____
5. Date Liberty engineer evaluation report transmitted to:
 - (a) Comsearch via fax requesting path coordination: _____
 - (b) Retained law firm: _____
6. Date Liberty engineer evaluation report received by FCC Compliance Officer: _____
7. Date engineer sent approved data sheet to Comsearch to initiate pre-clearance notification: _____
8. Date officer received from chief engineer certification of accuracy of Comsearch data sheet: _____
9. Date Comsearch supplemental showing received by:
 - (a) Chief engineer: _____
 - (b) Compliance Officer: _____

10. Date engineer instructed retained law firm to prepare and file license application: _____
11. Date officer instructed retained law firm to prepare and file STA application: _____
12. Date Liberty officer received granted STA: _____
13. Date officer sent this completed form to Liberty chief engineer: _____
14. All necessary FCC licensing steps for the grant of Special Temporary Authority have been completed for the path identified above and consequently I authorize initiation of service over this path:

Date: _____

Signature: _____

FCC License Check List

1. Expiration date of STA: _____
2. Date Liberty engineer received granted FCC License: _____
3. Date compliance officer received copy of FCC License: _____





THE CITY OF NEW YORK
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
75 Park Place, 6th Floor
New York, New York 10007

William F. Squadron
Commissioner

Telephone: (212) 788-
Facsimile: (212) 788-

April 27, 1992

W. James MacNaughton, Esq.
Attorney at Law
90 Woodbridge Center Drive, Suite 610
Woodbridge, New Jersey 07095

Dear Mr. MacNaughton:

I write in response to the Russian American Broadcasting Company's ("RABC") request for a "license" to operate a satellite-delivered Russian language video and audio service in New York City.

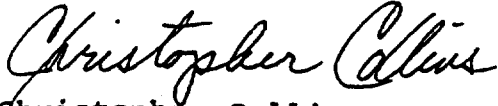
Under the New York City Charter, no license is required from the New York City Department of Telecommunications and Energy ("DTE") in order for RABC to provide such service.

Because RABC does not intend to utilize the inalienable property of the City for either private or public purposes, neither a revocable consent nor a franchise is required. Assuming, without admitting, that RABC is a "cable system", there are no provisions of City law which empower DTE to authorize the operation of cable systems other than through a franchise as set forth in Chapter 14 of the New York City Charter.

Because we have determined that no license is required from DTE in order for RABC to provide its satellite service, we have chosen not to respond to the various legal interpretations taken in RABC's "license application" regarding, among other things, the definition of a cable system, the City's right or obligation to grant franchises, the intent of Section 828 of Article 28 of the New York State Executive Law or Section 197c of the New York City Charter.

Thank you for your patience in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Collins". The signature is written in dark ink and is positioned above the printed name and title.

Christopher Collins
General Counsel

cc: William F. Squadron
William Finneran
John Grow, Esq.
Jackie Brilling, Esq.



NEW YORK STATE COMMISSION
ON CABLE TELEVISION

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In the Matter of	:	
Petition of Time Warner Cable of New York City and Paragon Cable Manhattan regarding the operations of Liberty Cable Company, Inc.	:	Docket No. 90460
	:	

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**ANSWER AND APPEARANCE OF
LIBERTY CABLE COMPANY, INC.**

1. Liberty Cable Company, Inc. ("Liberty") hereby enters its appearance in this proceeding and respectfully requests the opportunity to be heard at an evidentiary hearing. This appearance is timely made pursuant to the Order to Show Cause of the New York State Commission on Cable Television (the "Commission") released August 23, 1994 and the adjournments granted pursuant to letters from the Commission dated September 12, 1994 and October 19, 1994.

2. Liberty respectfully requests that the hearing be held in abeyance for at least one hundred eighty (180) days so that Liberty can conduct negotiations with the City of New York (the "City") for a cable television "franchise" as that term is defined in 47 U.S.C. § 522(9). Meetings for those negotiations have been held on September 8, 1994 and on October 28, 1994 and further meetings are planned.

3. If such an extension is granted, Liberty will not construct any new "cable systems" as that term is defined in 47

U.S.C. § 522(7) until the earlier of (a) May 1, 1995 or (b) the commencement of the requested evidentiary hearing or (c) the issuance of a Certificate of Confirmation by the Commission. This pledge is made solely to show Liberty's intention to act in good faith in this matter and is without prejudice to or waiver of any of Liberty's rights which are hereby expressly reserved. This pledge should not, in any event, be construed as an admission of any wrongdoing by Liberty.

4. The City's policy has been, for the past two and a half years, that no cable television franchise or license is required to provide cable service to New York City residents by means of interconnecting multifamily buildings with cable that does not use public rights-of-way, even if the buildings so interconnected are not under common control, ownership or management. The Commission has, for the past two and a half years, been aware of this policy and taken no action that would suggest disagreement with it.

5. Attached as Exhibit A is a true copy of a letter dated April 27, 1992 from the City of New York Department of Telecommunications and Energy ("DTE") stating this policy as the sole reason for rejecting the application of Russian American Broadcasting Company ("RABC") for a cable television franchise. The RABC cable television franchise application was made to the City by letter dated December 23, 1991, a true copy of which is annexed as Exhibit B.

6. RABC applied to the City for a franchise to provide cable service to buildings interconnected by cable without using public rights-of-way including multifamily buildings not under common ownership, control or management. The City said—unequivocally—that no license, revocable consent or franchise is required from the City to provide cable service at such buildings.* The Commission received copies of the RABC application and the City's rejection of the RABC application. The Commission did not, at the time, repudiate or question the City's policy. The Order to Show Cause in this matter is, to Liberty's knowledge, the first and only time the Commission has called the City's policy into question.

7. Liberty has wired the Cabled Buildings (as defined in its letter of June 28, 1994) in reliance on the City's policy as stated in the rejection of the RABC cable television franchise application. A responsible official at the DTE orally confirmed to Liberty that the City would not require a franchise from Liberty for the provision of cable service to interconnected buildings so long as public rights-of-way were not used. Liberty cannot and should not be penalized for acting in reliance on the City's stated policy particularly when all of the definitional nuances were

* The City's policy was adopted with a complete understanding and awareness of the "cable system" definition of the Federal Communications Commission in Definition of a Cable System, Report & Order, 5 F.C.C. Rcd. 7638 aff'd sub nom, Beach Communications v. FCC, ___ U.S. ___, 113 S.Ct. 2096 (1993) ("Beach"). The City's policy was adopted two months before a U.S. Circuit Court ruled the "cable system" definition unconstitutional.

clearly brought to the City's attention and the Commission did not previously take issue with the policy.

8. On October 13, 1993, the City adopted an authorizing resolution (the "Resolution") which reaffirmed its position that it would not entertain or issue cable television franchises to entities such as Liberty who do not use City property or rights-of-way. The Resolution annexed hereto as Exhibit C authorized the DTE "to grant franchises for the provision of cable television services. . ." but only when the provision of such services involve the installation of "facilities and associated equipment, on, over and under the inalienable property of the City of New York (emphasis supplied). The City, which deems this Resolution a necessary predicate to the award of additional cable franchises has resolved not to issue franchises to an entity such as Liberty.

9. Furthermore, even considering the telling limitations of the Resolution which does not purport to enable the City to issue franchises to an entity such as Liberty, DOITT has not yet prepared any RFPs pursuant to the Resolution. A 180 day negotiation period will be necessary to resolve the many novel and complex issues that arise in licensing the facilities Liberty uses to deliver cable service including whether and to what extent the City will change its policy concerning cable systems that do not use public rights-of-way and the contents of the RFP.

10. The City's policy that no license, revocable consent or franchise is required to provide cable service to the Cable Buildings, as reaffirmed in the Resolution, is an "authorization,"

as that term is used in 47 U.S.C. § 522(9). Nothing in Executive Law § 819 or the federal cable law requires a municipality to affirmatively act or enter into an actual franchise agreement with a cable operator in giving an "authorization." If and to the extent the Commission refuses to recognize the legitimacy of the City's "authorization," then Liberty will have been adversely affected by a final decision of the Commission with the right to seek its remedies in federal court pursuant to 47 U.S.C. § 555. An extension of time for Liberty to negotiate with the City may lead to a resolution that will render such a federal action unnecessary.

11. Petitioners Time Warner Cable of New York City and Paragon Cable of Manhattan (jointly and severally "Time Warner") are demanding that Liberty be ordered to immediately cease and desist from providing cable service to any buildings that are a "cable system" as that term is defined in 47 U.S.C. § 522(7).^{*} Such a draconian measure would serve no purpose other than to force hundreds of New York City residents to give up their Liberty cable service—which they chose and for which they pay a lower price—thereby forcing their return to the monopoly cable service and pricing of Time Warner. Surely the Commission does not wish to

^{*} As one would expect, Time Warner has argued for a very narrow definition of the "SMATV exception," 47 U.S.C. § 522(7)(B), asserting that co-ops under common management served by Liberty are nonetheless "cable systems." It has been Liberty's experience that management companies for co-ops play an integral role in the process by which co-op boards decide to sign contracts with Liberty. Companies which manage co-ops (but do not control or own them) are clearly entities contemplated in 47 U.S.C. § 522(7)(B). Each word in the statute, including the word "management," must be given significance and a meaning independent of "ownership" or "control."

cause such disruption or strain its resources by answering the inquiries of former Liberty subscribers on why their service was terminated by order of the Commission at the request of Time Warner.


12. Any cease and desist order to Liberty must allow sufficient time for Liberty to make alternative arrangements for providing service to its subscribers such as by installing microwave receiving antennas and obtaining licenses from the Federal Communications Commission for microwave transmission. Liberty estimates it will take six (6) months to make these arrangements for all affected buildings.

13. At the request of the Commission in its letter dated October 19, 1994, Liberty has annexed as Exhibit D a list of all buildings receiving "cable service," as that term is defined in 47 U.S.C. § 522(6) from Liberty, which buildings are interconnected by wire. As stated in Liberty's letter of June 28, 1994, many of these locations are under common ownership, control or management. This list is submitted solely to show Liberty's intention to act in good faith in this matter and is without prejudice to or waiver of Liberty's rights which are hereby expressly reserved. The submission of this list should not, in any event, be construed as an admission of any wrongdoing by Liberty or that Liberty is operating a "cable system" as that term is defined in 47 U.S.C. § 522(7) at any particular building.

14. Liberty hereby requests, pursuant to Public Officers Law § 89(5) that Exhibit D be excepted from disclosure under

paragraph (d) of subdivision two of section eighty-seven of Article 6 of the Public Officers Law. This list, Exhibit D, is derived from Liberty's operation as a commercial enterprise and its disclosure would cause substantial injury to the competitive position of Liberty. Such injury would include, without limitation, subjecting the owners, managers and residents of these buildings to the anti-competitive tactics Time Warner routinely uses at buildings Liberty serves including the selective and predatory offering of pricing, wiring and other incentives, saturation telemarketing and the dissemination of disinformation.

Dated: October 31, 1994



W. JAMES MACNAUGHTON, ESQ.
Attorney for Liberty Cable
Company, Inc.
90 Woodbridge Center Drive
Suite 610
Woodbridge, NJ 07095
(908) 634-3700



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L.U. 63, AS AMENDED (Resolution No. 1639)

Resolution authorizing the Department of Telecommunications and Energy to grant franchises for the provision of cable television services.

By Council Members Eisland and McCaffrey, (by the request of the Mayor); also Council Members Cruz and Foster.

WHEREAS, by Executive Order No. [8] 44, dated [April 12, 1990] December 3, 1992, the Mayor has designated the Department of Telecommunications and Energy as the responsible agency for the granting of telecommunications franchises; and

[WHEREAS, pursuant to Local Law 71 of 1990, the Department of Telecommunications became the Department of Telecommunications & Energy; and]

WHEREAS, pursuant to Section 363 of the Charter ("the Charter") of the City of New York ("the City"), the Commissioner of the Department of Telecommunications and Energy (the "Commissioner") has made the initial determination of the need for franchises for cable television services; and

WHEREAS, the Council has determined that the granting of such franchises will promote the public interest, increase access to information, enhance the health, welfare and safety of the public and stimulate commerce by assuring the universal availability and effective provision of cable television services throughout the entire City of New York;

The Council hereby resolves that:

The Council authorizes the Department of Telecommunications and Energy to grant non-exclusive franchises for the provision of cable television services and the installation of cable television facilities and associated equipment on, over, and under the inalienable property of the City of New York.

The public service to be provided under such franchises shall be "cable service" as defined by Section 602(5) of the Cable Communications Policy Act of 1984, 47 USC 522, as amended.

For purposes of this resolution, "inalienable property of the City" shall mean the property designated as inalienable in Section 383 of the Charter.

All franchises granted pursuant to this resolution shall require the approval of the Franchise and Concession Review Committee and the separate and additional approval of the Mayor.



The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the "Expiration Date"). No franchise shall be granted pursuant to this resolution by the Department of Telecommunications and Energy, nor approved by the Franchise and Concession Review Committee, or the Mayor after the Expiration Date.

Prior to the grant of any such franchise, a Request for Proposals ("RFP") or other solicitation shall be issued by the Department of Telecommunications and Energy. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with the New York State Environmental Quality Review Act ("SEORA"), the SEORA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq., the City Environmental Quality Review ("CEQR") Rules of Procedure of 1991, Executive Order No. 91 of 1977 and Section 197c of the Charter. The criteria to be used by the Department of Telecommunications and Energy to evaluate responses to such RFPs or other solicitations shall include, but not be limited to, the following:

- (1) the adequacy of the [proposed] compensation to be paid to the City;
- (2) the financial, legal, technical and managerial experience and capabilities of the applicant(s);
- (3) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise; [and]
- (4) the efficiency of the public service to be provided[.]; and
- (5) the impact, if any, on existing franchises and the services provided thereunder.

The Department of Telecommunications and Energy shall apply the City's [Anti-Apartheid policies] MacBride principles [in the selection of franchisees] when granting a franchise pursuant to this resolution.

Any franchise granted pursuant to this authorizing resolution shall be by written agreement which shall include, but not be limited to, the following terms and conditions:

- (1) the term of the franchise including option(s) to renew, if any, shall not exceed ten (10) years;
- (2) the compensation to be paid to the City shall be adequate and [may] shall include the payment of fees or the provision of facilities [or] and services, or both. Such compensation shall not be considered in any manner to be in the nature of a tax, but such

payments shall be made in addition to any and all taxes of whatsoever kind or description which are now or may at any time hereafter be required to be paid pursuant to any local law of the City, law of the State of New York, or law of the federal government;

(3) the franchise may be terminated or canceled by the Commissioner in the event of the franchisee's failure to comply with the material terms and conditions of the agreement;

(4) a security fund shall be established to ensure the performance of the franchisee's obligations under the agreement;

(5) the City shall have the right to inspect the facilities of the franchisee and to order the relocation of such facilities at the direction of the Department of Telecommunications and Energy;

(6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;

(7) all franchisees shall be required to maintain complete and accurate books of account and records which shall be made available on demand to the City for inspection;

(8) the franchisee shall be required to maintain an office in the City where the above books and records shall be maintained and where the franchisee's accounting, billing and clerical functions pertaining to the franchised operations shall be performed;

[(8)](9) there shall be provisions to insure quality [workmanship] work and construction methods;

(10) all franchisees shall comply with all applicable sections of the building and electrical codes of the City of New York and where the nature of any work to be done in connection with the installation, construction, operation, maintenance, repair, removal, or deactivation of cable television facilities and associated equipment on, over, and under the inalienable property of the City requires that such work be done by an electrician, the franchisees shall employ and utilize only licensed electricians;

[(9)](11) there shall be provisions containing the agreements required pursuant to paragraph 6 of subdivision (h) of Section 363 of the Charter relating to collective bargaining and other matters;

[(10)](12) there shall be provisions requiring the franchisee to comply with City laws, regulations and policies [related to] concerning, but not limited to, employment, purchasing and investigations;

[(11)](13) there shall be provisions to ensure adequate oversight and regulation of the franchisee by the City;

[(12)][(14)] there shall be provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the City and provisions to restrict changes in control of the franchisee without the prior written consent of the City;

[(13)][(15)] there shall be remedies to protect the City's interests in the event of the franchisee's failure to comply with the terms and conditions of the agreement;

[(14)][(16)] there shall be provisions to require all franchisees to submit to the City's Vendor Information Exchange System ("VENDEX") and the Integrated Comprehensive Contract Information System ("ICCIS");

[(15)][(17)] there shall be provisions to ensure that cable service provided under any such franchise be "state-of-the-art". "State-of-the-art" shall mean that level of technical or service performance, capacity and capability (including, but not limited to, plant or other equipment, access and other production equipment or facilities; construction techniques; consumer service; facilities, equipment, systems and operations; and performance standards) which has been developed and demonstrated to be workable in the cable industry, or any other comparable industry that provides services to the public under similar conditions, and is "economically and technically feasible and viable" from time to time throughout the term of the franchise. "Economically and technically feasible and viable" shall mean capable of being provided: (i) through technology which has been demonstrated to be feasible for its intended purpose; (ii) in an operationally workable manner; and (iii) in a manner which ensures that the system has a reasonable likelihood of being operated on a reasonably profitable basis over the term of the franchise;

[(16)][(18)] there shall be provisions to ensure that cable service provided under any such franchise be made available to all persons residing in that portion of the City covered by such franchise;

[(17)][(19)] there shall be provisions to insure the prompt and efficient resolution of all consumer complaints;

[(18)][(20)] there shall be provisions to insure the carriage of channel capacity for public, educational and governmental purposes and for commercial use;

[(19)][(21)] there shall be provisions to protect the City's interests in the event of the subsequent invalidity of any portion of the agreement and in the event of any change in applicable law;

[(20)][(22)] there shall be provisions to encourage competition in the cable television industry in the City of New York;

[(21)][(23)] there shall be provisions to require all franchisees to obtain all necessary licenses and/or permits from and to comply

with all Rules and Regulations of the New York State Commission on Cable Television, the Federal Communications Commission and any other governmental body having jurisdiction over the franchisee;

[(22)](24) there shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas covered by the franchise;

[(23)](25) there shall be provisions requiring the franchisee(s) to protect the property of the City and the delivery of public services from damage or interruption of operation resulting from the construction, operation, maintenance, repair, removal or deactivation of the equipment and facilities related to the franchise;

[and,]

[(24)](26) there shall be provisions designed to minimize the extent to which the public use of the streets of the City is disrupted in connection with the construction, operation, maintenance, repair, removal or deactivation of the equipment and facilities related to the franchise[.];

(27) in order to ensure the rational and orderly administration of cable television franchises, and the availability of service under each franchise to a substantial number of persons, no franchise agreement shall be entered into unless the area covered by the franchise includes at least one entire community board district and covers an area which includes at least 30,000 (thirty thousand) households (according to 1990 census data);

(28) with respect to any franchise granted pursuant to this resolution and covering part or all of the Bronx, Brooklyn, Staten Island or Queens, the terms and conditions of the franchise shall, to the extent practical and consistent with the goal of achieving competition in the provision of franchised cable television service in the City, be such that no cable television franchisee holding an existing cable television franchise covering part or all of the Bronx, Brooklyn, Staten Island or Queens on the effective date of this resolution would be entitled to a modification of its franchise agreement pursuant to Section 7.6 or its existing franchise agreement, (the provisions of this subsection (28) shall not be construed to limit any rights which the franchisee under such an existing franchise agreement may have pursuant to such existing franchise agreement) and;

(29) with respect to any franchise granted pursuant to this resolution and covering part or all of Manhattan, the terms and conditions of the franchise shall, to the extent practical and consistent with the goal of achieving competition in the provision of franchised cable television service in the City, be such that no

cable television franchisee holding an existing cable television franchise covering areas of Manhattan on the effective date of this resolution would be granted a modification of its franchise pursuant to Section 15.4.05 of its existing franchise agreement (the provisions of this subsection (29) shall not be construed to limit any rights which the franchisee under such an existing franchise agreement may have pursuant to such existing franchise agreement).

The Department of Telecommunications and Energy shall file with the Council the following documents:

(1) within fifteen (15) days of filing or receipt, a copy of all missives, including but not limited to, forms, applications, reports and correspondence regarding ULURP, SEORA, and CEOR;

[(1)] (2) within fifteen (15) days of issuance, a copy of each RFP or other solicitation issued pursuant to this resolution;

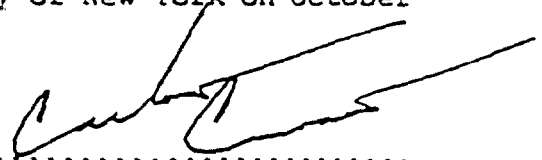
[(2)] (3) within fifteen (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution; and

[(3)] (4) on or before July 1 of each year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution during the preceding calendar year.

Adopted.

Office of the City Clerk,)
The City of New York,) ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on October 13, 1993, on file in this office.


.....
City Clerk. Clerk of Council



W. JAMES MacNAUGHTON, E. J.
Attorney at Law
90 Woodbridge Center Drive • Suite 610
Woodbridge, New Jersey 07095

Phone (908) 634-3700
Fax (908) 634-7499

June 28, 1994

VIA TELECOPIER AND REGULAR MAIL

New York State Commission
on Cable Television
Tower Building
Empire State Plaza
Albany, New York 12223

Re: Complaint of Time Warner Regarding
Liberty Cable Company, Inc.

Dear Sirs:

I am writing on behalf of Liberty Cable Company, Inc. ("Liberty") in response to a complaint dated May 27, 1994 by Time Warner Cable of New York City and Paragon Cable Manhattan (jointly and severally "Time Warner") concerning Liberty's operations in New York City. Liberty has not, as Time Warner claims, engaged in any unlawful methods of operation.

Liberty has, on a limited number of occasions, placed cable between residential buildings on the same block in New York City in lieu of installing separate microwave reception antennas on each building (the "Cabled Buildings"). Liberty provides service to residents of the Cabled Buildings without crossing or using any city streets or public property. It is the stated policy and position of the City of New York that Liberty does not need a franchise to provide service at the Cabled Buildings so long as Liberty's cable does not use or cross public property. Liberty has, in reliance on the City's policy, wired the Cabled Buildings without a franchise.

Many of the Cabled Buildings are under common ownership, management or control such as the buildings at 525 East 86th Street and 535 East 86th Street (cited in Time Warner's complaint at page 8) which are both managed by Kreisel Management.* Liberty clearly does not own or operate a "cable system" at these buildings as defined in 47 U.S.C. § 522(7)(B).

* Time Warner obviously had access to the 1994 Condo and Co-op Real Estate Book and could have readily determined this fact for itself.

New York State Commission
on Cable Television
June 28, 1994
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Moreover, Liberty has never had more than 1,000 subscribers in Cabled Buildings that are not under common ownership, management or control. Thus, if the City should change its policy and require a franchise of Liberty, Liberty will come into compliance with Article 28 of the Executive Law by filing the affidavit described in Executive Law § 813(2).

If you have any questions or need additional information, please feel free to call.

Sincerely,



W. James MacNaughton

WJM:lw
cc: P. Price
M. Schwartz

A434



ALL STATE LEGAL 800 222 0610 ED11 10 RECYCLED